IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

SUIT NO.3672 OF 1996

Punjab National Bank ..Plaintiff.

Vs.

M/s. Allure & Ors. ..Defendant.

...

Mr. A. Verma with Ms. Merlyn Monteiro for the Plaintiff.
Ms. Aarti Binje i/b Khaitan & Jayakar for the Defendant.

...

CORAM: **DR. D.Y. CHANDRACHUD, J.**

16th July, 2007.

P.C. :

1. The Suit has been instituted for the recovery of an amount of Rs.1,49,205/- at the foot of the packing credit facility and an amount of Rs.3,59,915.75 due at the foot of the CAOD (Post Shipment Account) together with future interest. The Plaintiff had extended facilities to the First Defendant which is a partnership firm. Defendants 2 and 3 are the partners of the firm. Defendants 4 to 7 have been sued in their capacity as guarantors.

2. In pursuance of a request made in September 1991, the Plaintiff sanctioned to the First Defendant a Packing Credit Facility against hypothecation of stocks upto a limit of Rs.5 lacs and a

CAOD (Post Shipment Facility) of Rs.10 lacs. In consideration of the facilities thus granted the Defendants executed several loan documents including (i) an agreement of hypothecation dated 15th October, 1991 (Exh. A to the compilation of documents); (ii) a letter of undertaking dated 15th October, 1991 (Exh. A-1); (iii) a letter of authority dated 15th October, 1991 (Exh. B) and (iv) an agreement of guarantee (executed by the Fourth Defendant) dated 15th October, 1991 (Exh. E). The documents were executed at Mumbai on 31st December, 1991. The Packing Credit Facility was enhanced from Rs.5 lacs to Rs.10 lacs and an additional limit of Rs.11.75 lacs was allowed in the COAD (Post Shipment Facility). In consideration of the enhancement, security documents were executed by the Defendants viz. an agreement of hypothecation dated 4th November, 1991, an agreement of guarantee dated 4th November, 1991 executed by Defendant No.1 and a letter of authority dated 11th December, 1993 (Exhibits C. F and D to the compilation of documents). The agreements of guarantee dated 15th October, 1991 and 4th November, 1991 have been signed by the Karta of the Fourth Defendant Shri Nalinkant Manilal Shah. The guarantees are continuing guarantees.

3. The First Defendant has confirmed the balance due by executing letters dated 22nd April, 1992, 4th June, 1993, 19th October, 1993 and 29th June, 1994. Similarly the Fourth Defendant has also confirmed the balance due by several letters including letters dated 25th July, 1994.

4. The Defendants committed default in the repayment of the dues, and committed a breach of the terms and conditions under which the facilities were granted. On 15th November, 1995 the Plaintiff called upon the Defendants to repay the outstandings to which the Defendants responded on 22nd November, 1995. An amount of Rs.1,49,205/- was due at the foot of the Packing Credit facility and Rs.3,59,915.75 at the foot of the CAOD (Post Shipment Facility). A certified copy of the ledger extract from the two loan accounts has been placed on the record along with the certificate as required under the Information Technology Act.

5. The Defendants have failed to file the written statement despite service of the writ of summons. At the hearing of the Suit, it has been stated on behalf of the Defendants that they wish to settle the Suit. The Suit has been adjourned from time to time and

the request before the Court does not appear to be bonafide.

6. The Plaintiffs have relied upon the affidavit in lieu of the examination-in-chief of their Senior Manager, Mohandas Panicker. A compilation of the documents has been tendered and taken on record. The affidavit contains a recital of the essential facts, already noted above, on the basis of which the claim has been put forth. The claim has been duly substantiated on the basis of the evidence on the record. The Suit shall accordingly stand decreed in terms of prayer clauses (a) and (b) (with the modification that the Plaintiffs would be entitled to interest at the rate of 12% per annum on the principal sum from the date of the institution of the Suit until payment or realization). Insofar as prayer clause (b) is concerned, the suit securities shall be realized and the net realization shall be applied towards the dues mentioned in prayer clauses (a) and (b) together with necessary costs, charges and expenses. In the event that the net sale proceeds that are realized from the hypothecated security, more particularly described in Exh. M, are insufficient to cover the amounts decreed in prayer clauses (a) and (b), the Plaintiffs shall be at liberty to apply for a personal decree against the Defendants to the extent necessary. The

Plaintiffs would be entitled to the costs of the suit.

Certified copy expedited.